

February 8, 2019

Via US Mail Certified

Edward Seetler
Zurn Industries, LLC
1747 Commerce Way
Paso Robles, CA 93446

Via US Mail

Dennis Haines
Rexnord-Zurn Holdings Inc
511 West Freshwater Way
Milwaukee, WI 53204

CT Corp, Service Agent
Zurn Industries, LLC
818 West 7th Street
Los Angeles, CA 90017

Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Zurn Industries, LLC.

I am writing on behalf of Eden Environmental Citizen's Group ("EDEN") to give legal notice that EDEN intends to file a civil action against Zurn Industries, LLC ("Discharger") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the Zurn Industries facility located at 1747 Commerce Way in Paso Robles, California ("the Facility" or "the site")

EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

2151 Salvio Street #A2-319 Concord, CA 94520
Telephone: 925-732-0960 Email: edenenvillains@gmail.com
Website: edenenvironmental.org

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b) Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB") Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") collectively, the "General Permit")

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates that on or around June 26, 2015, the Discharger submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility under the 2015 General Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 3 401004898.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, the Discharger has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377, the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

II. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Zurn Industries' permanent facility address of 1747 Commerce Way in Paso Robles, California.

Zurn Industries manufactures engineered plumbing and drainage products. Facility operations are covered under Standard Industrial Classification Codes (SIC) 3491, Industrial Valves.

Based on the EPA's Industrial Storm Water Fact Sheet for Sector AA – Fabricated Metal Products, polluted discharges from operations at the Facility contain galvanized metals such as zinc, nickel and chromium; heavy metals, such as iron, copper and aluminum; toxic metals, such as lead and cadmium; total suspended solids ("TSS"); chemical oxygen demand (COD); nitrates and nitrites; phosphates, chlorinated solvents; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

Information available to EDEN indicates that the Facility's industrial activities and associated materials are exposed to storm water, and that each of the substances listed on the EPA's Industrial Storm Water Fact Sheet is a potential source of pollutants at the Facility.

B. The Affected Receiving Waters

The Facility discharges the Salinas River, which flows to Monterey Bay ("Receiving Waters").

Monterey Bay is a water of the United States. The CWA requires that water bodies such as the Monterey Bay meet water quality objectives that protect specific "beneficial uses." The Regional Water Board has issued the *Central Coast Regional Water Quality Control Basin Plan* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and noncontact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated storm water from the Facility adversely affects the water quality of the Monterey Bay watershed and threatens the beneficial uses and ecosystem of this watershed.

Furthermore, the Salinas River is listed for water quality impairment on the most recent 303(d)-list for the following: Chlordane, Chloride, Chlorpyrifos, Diazinon, Dichlorodiphenyldichloroethane, Dieldrin, PCBs (Polychlorinated biphenyls), Nitrates, Fecal Coliform, Sediment, Sodium, Temperature, and Total Dissolved Solids.

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Deficient/Invalid SWPPP or Site Map

Zurn Industries' Storm Water Pollution Prevention Plan ("SWPPP") prepared for the Facility on April 22, 2016, by its in-house Environmental Health & Safety Division, is inadequate and fails to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

- (a) The SWPPP fails to discuss in specific detail Facility operations, including its SIC Code and hours of operations (Section X.D.2.d), and does not adequately indicate the Facility contact information (Section X.A.1).
- (b) The Minimum Best Management Policies (BMPs) as indicated in the SWPPP are insufficient and do not comply with the minimum required categories as listed in the General Permit, which include Good Housekeeping, Preventive Maintenance, Spill and Leak Prevention and Response, Material Handling and Waste Management, Erosion and Sediment Controls, Employee Training Program and Quality Assurance and Record Keeping (Section X.H.1).
- (c) The Advanced BMPs as identified in the SWPPP are inadequate to comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in the Facility's storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability, including Exposure Minimization BMPs, Storm Water Containment and Discharge Reduction BMPs or Treatment Control BMPs (Section X.H.2).
- (d) The SWPPP fails to discuss in detail factors related to the detention pond, including its maximum capacity, whether it is designed to conform with the requirements of Section X.H.6 of the General Permit (Design Storm Standards for Treatment Control BMPs), or whether it is engineered and constructed to contain the maximum historic precipitation event.
- (e) The SWPPP fails to include an appropriate discussion of drainage areas and Outfalls from which samples must be taken during Qualified Storm Events (Section XI).

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

1. Failure to Conduct Visual Observations

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN alleges that between July 1, 2015, and the present, the Discharger has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

2. Failure to Collect and Analyze the Required Number of Storm Water Samples

In addition, EDEN alleges that the Discharger has failed to provide the Regional Water Board with the minimum number of annual documented results of facility run-off sampling as required under Sections XI B.2 and XI B.1 a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI C.6 provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system:

- a. Two storm water sample analyses for the time period July 1, 2015, through December 31, 2015,
- b. Two storm water sample analyses for the time period January 1, 2016, through June 30, 2016,
- c. Two storm water sample analyses for the time period July 1, 2016, through December 31, 2016,
- d. Two storm water sample analyses for the time period January 1, 2017, through June 30, 2017,
- e. Two storm water sample analyses for the time period July 1, 2017, through December 31, 2017, and
- f. Two storm water sample analyses for the time period January 1, 2018, through June 30, 2018, and
- g. Two storm water sample analyses for the time period July 1, 2018, through December 31, 2018

C. Falsification of Annual Reports Submitted to the Regional Water Board

Section XXI L of the General Permit provides as follows:

L. Certification

Any person signing, certifying, and submitting documents under Section XXI K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI N of the General Permit provides as follows:

N. Penalties for Falsification of Reports

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On July 15, 2016, and June 29, 2018, the Discharger submitted its Annual Reports for the Fiscal Years 2015-16 and 2017-2018, respectively. These Reports were signed under penalty of law by Edward Stettler. Mr. Stettler is the currently designated Legally Responsible Person ("LRP") for the Discharger.

Both the FY 2015-16 and 2017-18 Annual Reports included Attachment I as an explanation for why the Discharger failed to sample the required number of Qualifying Storm Events during the reporting years for all discharge locations, in accordance with Section XI B. Mr. Stettler certified in both of the reports, under penalty of perjury, that the required number of samples for each of the reporting periods were not collected by the Discharger because he claimed insufficient qualifying storm water discharges occurred during the reporting year and scheduled facility operating hours.

Records from the National Oceanic and Atmospheric Administration (NOAA) website/database confirm that during the fiscal years 2015-16 and 2017-18, there were sufficient Qualified Storm Events (QSEs) occurring near the Facility during or within 12 hours of the start of regular business hours to allow the Discharger to collect the requisite number of samples.

Based on the foregoing, it is clear that Mr. Stettler made false statements in the Facility's 2015-16 and 2017-18 Annual Reports.

D. Deficient BMP Implementation

Sections I.C. V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that the Discharger has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited

Specifically, the Facility has been in operation at the Paso Robles site since at least 2006. However, the Facility failed to develop and implement any Stormwater Pollution Prevention Plan (SWPPP) until April 22, 2016, and operated the site without a SWPPP during that time period.

The Discharger's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each and every day the Facility discharges storm water without meeting BAT and BCT.

E. Discharges In Violation of the General Permit

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entities responsible for the alleged violations are Zum Industries, LLC, as well as employees of the Discharger responsible for compliance with the CWA.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least July 1, 2014, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez
EDEN ENVIRONMENTAL CITIZEN'S GROUP
2151 Salvia Street #A2-319
Concord, CA 94520
Telephone: (925) 732-0960
Email: Edenenvcitizens@gmail.com (emailed correspondence is preferred)
Website: edenenvironmental.org

EDEN has retained counsel in this matter as follows:

XHIA VIN SINHA
Sinha Law
1645 Willow Street, Suite 150
San Jose, CA 95125
Telephone: (408) 791-0432
Email: xsinha@sinha-law.com

To ensure proper response to this Notice, all communications should be addressed to EDEN's legal counsel, Mr. Xhavin Sinha.

VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

As discussed herein, the Facility's discharge of pollutants degrades water quality and harms aquatic life in the Receiving Waters. Members of EDEN live, work, and/or recreate near the Receiving Waters. For example, EDEN members use and enjoy the Receiving Waters for fishing, boating, swimming, hiking, biking, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study. The unlawful discharge of pollutants from the Facility impairs each of these uses.

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of EDEN's members have been, are being, and will continue to be adversely affected by the failure of the Discharger to comply with the General Permit and the Clean Water Act.

CWA §§ 505(a)(1) and 505(i) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (i), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), EDEN will seek to recover its litigation costs, including attorneys' and experts' fees.

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages the Discharger's counsel to contact EDEN's counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

AIDEN SANCHEZ
Eden Environmental Citizen's Group

Copies to:

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Regional Administrator
U.S. EPA -- Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Executive Director
State Water Resources Control Board
P.O. Box 140
Roseville, CA 95812-0140